



U.S. Citizenship  
and Immigration  
Services

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CL



FILE: [REDACTED]  
EAC 04 020 51277

Office: VERMONT SERVICE CENTER

Date: MAY 19 2006

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

2 Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, filed with Citizenship and Immigration Services (CIS), indicates that the Church of the Mediator is the petitioner. The petition, however, is signed by [REDACTED]. Therefore, the Church of the Mediator cannot be considered as having filed the petition on behalf of [REDACTED] and [REDACTED] shall be considered as the self-petitioner.

The petitioner seeks classification as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a minister of music. The director determined that the petitioner had not established that the position qualifies as that of a religious worker or that she had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

On appeal, the petitioner submits additional documentation.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The first issue on appeal is whether the petitioner established that the position qualifies as that of a religious worker.

According to the regulation at 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work as a religious worker. To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and

the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

Citizenship and Immigration Services (CIS) therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In a letter of October 24, 2003, [REDACTED] of the Church of the Mediator stated that the church was offering the petitioner the position of minister of music "with the responsibility to work with the youth and children, and assist our senior chorus Director." [REDACTED] also stated that the petitioner had been "doing this job since 1995 without any stipend." The petitioner submitted a copy of her weekly schedule for the church, which included "preparation classes," photocopies and tape recording of hymns, educational games, "musical initiation," individual auditions, vocalization, children's chorus practice, introduction to music and corporal expression, individual guitar, recorder and percussions classes, teaching religious and Latin American music, and practicing hymns, and twice monthly community service and meeting with parents of chorus members.

In a letter dated January 20, 2005, submitted in response to the director's request for evidence (RFE) dated October 28, 2004, [REDACTED] described the proffered position as a combination of a catechist, lay reader and pastoral leader "with the responsibility of teaching music in a religious context." According to [REDACTED], this position of "music catechist" or "lay catechist" is to "use music as a vehicle of communication to teach the younger youth . . . church Doctrine and History." [REDACTED] again stated that the petitioner had not been paid a salary, but that with the growth of the congregation, it was "necessary" to begin paying her a stipend.

The petitioner provided the following "job description" for a "music catechist" with the employing organization:

The Clergy in charge as well as members of the Hispanic Ministry Committee have decided to combine music with Catechism. By teaching our youth knowledge and skills in music, as part of learning our Catechism, we will use an effective and permanent communication method that will help the young people join in our Worship and fellowship.

For this special ministry, we have employed a Catechist that has music teaching talents that has demonstrated that this combination is effective. The youth learn the scripture, its history, the functions of the church in their present and future lives . . .

The person selected for this position, will work full-time, at the combined effort of Catechism and music directed at working with the Hispanic youth of our community.

Through playing and teaching music the Catechist will work with the youths in preparation for baptism, understand the Holy Scriptures, History of the Church and our Doctrine.

Also in response to the RFE, the petitioner submitted a revised work schedule, which now included preparation classes and worksheets for catechism, youth leadership groups, bible study, matinee prayer, "advocation to the Miraculous Mary," "vesperin oration" "biblical rosary," catechism confirmation, children's bible school, and catechism first communion. The petitioner also stated that she was involved in mass on Sunday but did not specify her role.

The petitioner submitted a copy of an excerpt from the *Constitution & Canons* of the Episcopal Church highlighting the requirements of a pastoral leader. Canon 3 at section 1(a) provides that "[a] confirmed communicant in good standing may serve as [a] Catechist, if licensed by the Bishop or Ecclesiastical Authority of the Diocese in which the person is a member." Canon 3 outlines the requirements for licensing a pastoral leader.

In its response to the director's RFE, the petitioner changed her job responsibilities, adding duties such as bible studies and catechism, removing duties such as individual music lessons, and indicating that the position is actually that of "pastoral leader." The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). The information provided by the petitioner in its response to the director's RFE did not clarify or provide more specificity to the original duties of the position, but rather added new duties to the job description. Therefore, the analysis of this criterion will be based on the job description submitted with the initial petition.

On appeal, the petitioner submits yet another job description for the proffered position, now termed a "lay catechist - music ministry worker." According to the new job description, the duties of the position will include organizing and conducting weekly baptism communion and confirmation preparation classes; teaching bible classes; preparing and distributing written materials on the history of the church; participating in altar functions; conducting music classes; and teaching catechism classes.

The duties of the position as originally described by the petitioner (that of minister of music) did not establish that the position was defined and recognized by the Episcopal Church, or that the position is traditionally a permanent, full-time, paid position within the church. Therefore, the evidence submitted with the petition did not establish that the proffered position qualifies as that of a religious worker within the meaning of the statute and regulation.

The second issue presented on appeal is whether the petitioner established that she had been continuously employed in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition. The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been

a member of a religious denomination which has a bona fide nonprofit religious organization in the United States.” The regulation indicates that the “religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.”

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on October 27, 2003. Therefore, the petitioner must establish that she was continuously working as a music minister throughout the two-year period immediately preceding that date.

According to [REDACTED] in his October 24, 2003 letter, the petitioner had “been doing this job since 1995 without any stipend.” With the petition, the petitioner submitted a copy of her weekly work schedule; however she submitted no evidence documenting her work with the Church of the Mediator. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In his RFE, the director advised the petitioner that she had not submitted “historical documentation such as time sheets, work logs, pay receipts, etc.” to corroborate her employment history.

In response, the petitioner submitted a copy of the revised 2004 weekly work schedule previously discussed, unidentified photographs and copies of church flyers with the petitioner’s name listed on the front. A page entitled “translations” and several documents in English precede these documents. However, the record is unclear as to whether these “translations” purport to be of the accompanying church flyers. Furthermore, even if the translations are of the flyers, they do not meet the requirements of 8 C.F.R. § 103.2(b)(3), which require that documents submitted in a foreign language “shall be accompanied by a full English translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.” The petitioner submitted no other evidence of her work with the church. *Matter of Soffici*, 22 I&N Dec. at 165.

The petitioner also submitted a Form I-864, Affidavit of Support Under Section 213A of the Act, signed by [REDACTED] and [REDACTED] on January 20, 2005, and copies of the [REDACTED]’ tax returns for the years 2001 through 2003. The petitioner submitted no statements from the [REDACTED] indicating that they provided her with financial support during the qualifying two-year period.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of “a number of safeguards . . . to prevent abuse.” See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged “principally” in such duties. “Principally” was defined as more than 50 percent of the person’s working time. Under prior law a minister of religion was required to demonstrate that he/she had been “continuously” carrying on the vocation of minister for the two years immediately preceding the time of application. The term “continuously” was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term “continuously” also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore, that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

In the rare case where volunteer work might constitute prior qualifying experience, the petitioner must establish that the beneficiary, while continuously and primarily engaged in the traditional religious occupation, was self-sufficient or that his or her financial well being was clearly maintained by means other than secular employment.

On appeal, the petitioner states that the affidavit and tax documentation establish that her sister supported her during the period that she worked for the Church of the Mediator without compensation. However, the petitioner submitted no evidence of that support for the record. *Matter of Soffici*, 22 I&N Dec. at 165. Further, the petitioner submitted no evidence, such as authenticated work schedules, work logs or time sheets to corroborate her work with the church. *Id.*

As the petitioner has failed to provide corroborative evidence of her work with the church and failed to establish that she was not dependent upon secular employment for her support, she has not established that she was continuously engaged in a qualifying religious occupation for two full years immediately preceding the filing of the visa petition.

Beyond the decision of the director, the petitioner has not established that her prospective U.S. employer is a bona fide nonprofit religious organization.

The regulation at 8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

(3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code (IRC) of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement, if applicable, and a copy of the organizing instrument of the organization, which contains a proper dissolution clause and which specifies the purposes of the organization.

The petitioner submitted copies of a December 10, 1974 and a January 22, 1998 letters from the IRS to The Board of Managers of the Diocesan Missionary and Church Extension Society of the Protestant Episcopal Church in the Diocese of New York, indicating that the organization had been granted a tax exempt status under sections 501(c)(3) of the IRC as organizations described in sections 509(a)(1) and 170(b)(1)(A)(i) of the IRC. The letters of exemption do not indicate that the IRS granted a group exemption to the organization that was applicable to its subordinate units.

The petitioner submitted a copy of an excerpt from a 1992 IRS Publication 78, "Cumulative List of Organizations described in Section 170 (c) of the Internal Revenue Code of 1986," which lists the Episcopal Churches & Dioceses in the U.S. In a letter dated September 22, 1999, the assistant controller of the Diocese of New York of the Episcopal Church, the Reverend Gerald Keucher, stated that the Church of the Mediator is a subordinate unit of the Episcopal Diocese of New York, whose corporate name is The Board of Managers of the Diocesan Missionary and Church Extension Society of the Protestant Episcopal Church in the Diocese of New York. [REDACTED] also stated, "The Episcopal Diocese of New York relies on the general exemption to 'Episcopal Churches and Dioceses in the United States and Institutions New York NY'" as listed in IRS Publication 78. However, section 170 (c) of the IRS refers to charitable organizations including those organized and operated for religious, charitable, scientific, literary or educational purposes, and therefore does not, by itself, establish the religious nature of a particular organization. Further, the petitioner submitted no evidence that The Board of Managers of the Diocesan Missionary and Church Extension Society of the Protestant Episcopal Church in the Diocese of New York was granted a group tax-exemption for its subordinate units.

The petitioner must either provide verification of individual exemption from the IRS, proof of coverage under a group exemption granted by the IRS to the denomination, or such documentation as is required by the IRS to establish eligibility as a tax-exempt nonprofit religious organization. Such documentation to establish eligibility

for exemption under section 501(c)(3) includes: a completed Form 1023, a completed Schedule A attachment, if applicable, and a copy of the articles of organization showing, *inter alia*, the disposition of assets in the event of dissolution.

The organization can establish eligibility under 8 C.F.R. § 204.5(m)(3)(i)(B) by submitting documentation that establishes the religious nature and purpose of the organization, such as brochures or other literature describing the religious purpose and nature of the activities of the organization. The necessary documentation is described in a memorandum from William R. Yates, Associate Director of Operation for CIS, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003):

- (1) A properly completed IRS Form 1023,
- (2) A properly completed Schedule A supplement, if applicable,
- (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization, and
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The above list is consistent with the regulatory requirement at 8 C.F.R. § 204.5(m)(3)(i)(B), cited above. The memorandum specifically states that the above materials are, collectively, the “minimum” documentation that can establish “the religious nature and purpose of the organization.” Thus, for example, a petitioner cannot meet this burden by submitting only the articles of incorporation of the organization. Also, obviously, it is not enough merely for the petitioner to *submit* the documents listed above. The *content* of those documents must establish the religious purpose of the organization. The record contains no evidence that the petitioner’s prospective U.S. employer is a qualifying tax-exempt organization. For this additional reason, the petition may not be approved.

Further beyond the director’s decision, the petitioner has not established that her prospective U.S. employer has the ability to pay her the proffered wage.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

According to [REDACTED], the Church of the Mediator will pay the petitioner \$300 per week for her services. As evidence of the church’s ability to meet this obligation, the petitioner submitted a copy of the 2003 and 2004 budgets of the Episcopal Diocese of New York. Although the diocese does not indicate that it will assist in meeting the expenses incurred in paying the petitioner’s salary, the 2002 parochial reports, included as part of the 2003 budget, indicates that assistance may be provided to the church by the dioceses.

Nonetheless, the above-cited regulation states that evidence of ability to pay “shall be” in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of

documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of primary evidence.

According, the petitioner had not established that her prospective U.S. employer has the ability to pay her the proffered wage as of the date the petition was filed. This deficiency constitutes an additional ground for denial of the petition.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.